

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

APRIL TERM, 1921.

No. 3533. **753**

WILLIAM SMITH, APPELLANT,

vs.

JOHN H. THOMAS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MARCH 14, 1921.

PRINTED APRIL 28, 1921.

Court of Appeals of the District of Columbia.

APRIL TERM, 1921.

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WILLIAM SMITH, APPELLANT,

vs.

JOHN H. THOMAS, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
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Court of Appeals of the District of Columbia.

No. 3533.

WILLIAM SMITH, Appellant,

vs.

JOHN H. THOMAS.

a Supreme Court of the District of Columbia.

At Law.

No. 64725.

JOHN H. THOMAS, Plaintiff,

vs.

WILLIAM SMITH, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Complaint in the Municipal Court.

Filed November 30, 1920.

In the Supreme Court of the District of Columbia.

At Law.

No. 64725.

JOHN H. THOMAS, Plaintiff,

vs.

WILLIAM SMITH, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainant John H. Thomas being first duly sworn according to law, states that he is entitled to the possession of the premises

No. 200 L Street, N. W., located in the District of Columbia, and that the same is unlawfully detained from him and held without right by the defendant William Smith to whom the complainant had heretofore rented the said premises as a monthly tenant and whose tenancy and estate has been determined by default in the payment of rent, as provided in the agreement under which said tenancy was established (and the service of a due notice to quit) Complainant therefore prays that a Summons be issued, commanding the defendant to appear and show cause why judgment should not be given against him for the restitution of the possession of said premises, and costs of this suit.

JOHN H. THOMAS.

Subscribed and sworn to before me this 29th day of October A. D. 1920.

JOHN P. CAGE, [SEAL.]
Notary Public.

[Notarial Seal.]

2

Judgment in the Municipal Court.

Nov. 10, 1920.

Judgment for plaintiff for possession of the within-described premises after trial, with costs.
(Appeal Noted.)

ROBT. E. MATTINGLY,
Judge.

Plaintiff's Affidavit.

Filed December 8, 1920.

* * * * *

I, John H. Thomas, being first duly sworn, according to law, on oath, depose and say: That I am the John H. Thomas named as Plaintiff-Appellee in the above entitled cause in which William Smith is the Defendant-Appellant; and that I have a bona-fide claim and right to the possession of premises No. 200 L Street, N. W., which said premises are now occupied and held without right by the aforementioned defendant, William Smith; and which said claim of the right of possession I base upon the following facts:

I am the bona fide owner of premises No. 200 L Street, N. W., as is evidenced by the attached contract and statement from Bradford & Company, through whom I purchased the said property, and which exhibits are prayed to be considered a part of this affidavit; and by the deed which was duly executed, conveying this property. I do further set forth that under date of the 17th of August, A. D., 1920 an agreement was entered into between Aurilla S. Caywood, as lessor, and William Smith, as lessee, whereby the said William

3 Smith was to occupy the premises concerned as a tenant from month to month, at a fixed rate, the original of which said agreement is hereunto attached and is prayed to be considered a part hereof. The aforementioned agreement between the said Aurilla S. Caywood and the said William Smith was transferred and assigned, as regards the interests of said Aurilla S. Caywood, by the said Aurilla S. Caywood, to the affiant, John H. Thomas, under the date of the 18th of September, A. D., 1920, as is indicated by the assignment on the back of the aforementioned lease agreement; and which said assignment is prayed to be considered a part hereof. Affiant further states that under date of the 21st of September, A. D., 1920, a thirty day notice to quit, terminating the tenancy of the aforementioned William Smith, was duly served upon the said William Smith; and after the expiration of said thirty (30) days, a regular Seven Day Summons was caused to be issued by the Municipal Court of the District of Columbia, as a result of the service of which Landlord and Tenant Case No. — was set for hearing and was duly heard before one of the Judges of the said Municipal Court, holding a Landlord & Tenant Court. In the said Landlord & Tenant Case No. — judgment was had in favor of the affiant, the plaintiff therein, and against the aforementioned William Smith, named therein as defendant, as is evidenced by the papers therein certified to this Honorable Court, and from which said judgment the defendant, the said William Smith, has noted an appeal.

Affiant further states that he has received no rent for said premises since coming into possession of the same: and that, by reason of the facts as herein outlined, and the further fact that he, the affiant, requires the premises for his own use and occupancy, and as the defendant's tenancy and estate in said premises has
4 been determined and has expired, the affiant is entitled to a judgment for possession of said premises, affirming the judgment of the Municipal Court, in favor of the affiant.

Affiant further states that the premises aforesaid consist of six (6) rooms and bath, and that he is entitled to compensation for the use and occupancy thereof from the date of the judgment of the Municipal Court, appealed from, to the date of the judgment of this Court for possession of said premises; and that a reasonable value of the use and occupation aforesaid, and corresponding with the amount heretofore paid, is at the rate of Twenty-five Dollars and Fifty Cents (\$25.50) per month.

Wherefore, the affiant prays that a judgment be entered herein against the defendant and in favor of plaintiff for possession of the property herein referred to, together with costs; and further that a judgment be entered in favor of plaintiff and against the defendant for the amount claimed herein for the use and occupation of said premises for the time mentioned in the paragraph just preceding on the annexed page of this affidavit.

JOHN H. THOMAS,

Subscribed and sworn to before me this 3rd day of December,
A. D., 1920.

[SEAL.]

CHAS. E. ROBINSON,
Notary Public, D. C.

5 Bradford and Company, Real Estate Investments,
 335 Southern Building, Washington, D. C.

June 3rd, 1920.

Received of John H. Thomas a deposit of Two hundred (\$200.00) Dollars, to be applied as part payment in the purchase of lot in square —, with improvements thereon, known as #200 L. St. N. W. block in the City of Washington, District of Columbia.

The purchaser is required to make full settlement in accordance with the terms of sale within Ninety days from this date, or the deposit will be forfeited.

Price of property Three thousand eight hundred dollars (\$3,800.00).

Terms of sale: Three hundred and fifty dollars cash and the balance, amounting to \$3,450.00 to be represented by a deed or deeds of trust payable at the rate of not less than Thirty five dollars (\$35.00) per month.

Title to be a good record title or deposit refunded and sale declared off.

Interest on trusts, rents, insurance, and all taxes, and assessments, both general and special, to be adjusted to date of transfer.

Examination of title, conveyancing and recording at the cost of purchaser.

The forfeiture of deposit does not relieve the purchaser of the responsibility to comply with the terms of sale.

Either purchaser or owner may declare this contract void in the event of the destruction of or serious damage to said improvements before the date provided for settlement, in which event said
6 deposit shall be returned to the purchaser.

This contract is made subject to approval by owner.

BRADFORD AND COMPANY,

Agent.

By R. J. BROWN.

Accepted by

JOHN H. THOMAS,
Purchaser.

— —, 19—.

I accept the within contract and agree to pay to Bradford & Company, the usual commission as set forth by the Real Estate Brokers' Association of the District of Columbia.

Approved.

— —,
Owner.

(On Back.)

(\$150.00.)

July 12, 1920.

Recd. of John H. Thomas additional paym-t of One hundred and fifty dollars (\$150.00) on the within contract.

BRADFORD & CO.,
By JOE. C. BROWN.

7 Mr. John H. Thomas in Account with Bradford and Company, Real Estate Investments.

Special Attention Given to Collection of Rents and Management of Estates.

References:

Citizens Savings Bank,
Board of Trade,
Real Estate Brokers Association,
Chamber of Commerce.

335 Southern Building,
Washington, D. C., September 15, 1920.

Of Lot 825, Square 559.

Premises No. 200 L Street, N. W.

	Dr.	Cr.
Price of Property	3,800.00	
Water Rent		
Insurance	15.75	
Deposit		450.00
First Deed of Trust		3,450.00
Interest accrued at per cent. from		
Deferred payments (Second Deed of Trust) ..		
Interest on Second Deed of Trust at per cent from		
Rent at \$25.50 paid to Sept. 24, 1920.....		7.65
Settlement	25.00	
Commission		
8 Taxes at \$1,625.00 at \$1.95 from July first, 1920		6.58
To Revenue Stamps deed \$1.00 trust 80¢	1.80	
To Recording	3.55	
To Notary fee	2.00	
To Conveyancing deed \$5.00 trust \$10.00....	15.00	
To examination of Title and Tax Certificate..	30.50	
Balance	.63	
	<u>3,914.23</u>	<u>3,914.23</u>

17th of Aug., 1920.

Reference of Wm. Smith, White; ———, Colored.

Rents of A. S. Caywood.

Sub. Rents ———.

No. ——— Street.

— years, — months.

Rent paid to ———.

[Wants to]* Rent No. 200 L Street Northwest.

Remarks: ———

(Signed)

———

New agreement to raise rent.

A. S. Caywood Rent Agreement, General Form.

This agreement, made this 17th day of August 1920 by and between Aurilla S. Caywood [A. S. Caywood]* hereinafter called Lessor, of the first part, and William Smith hereinafter called Lessee, of the second part: all words herein referring to Lessee to be taken to be of such gender and number as the circumstances may require.

Witnesseth, that Lessor doth hereby let and rent unto Lessee and Lessee doth hereby hire and take the Premises known as No. 200 L St; N. W. situated on the ——— in the City of Washington, District of Columbia, to be used as a dwelling and for no other purpose, for the term of one month to-wit: From the 24th day of July, 1920, to and including the 23rd day of August, 1920 for the total rental of Twenty-five & 50/100 (\$25 50/100) Dollars, payable in monthly installments of Twenty-five & 50/100 (\$25 50/100) Dollars in lawful money of the United States, in advance on the 24th day of each calendar month, beginning the 24th day of July, 1920, until the expiration of the tenancy, at the Office of said [A. S. Caywood,]* in the City of Washington, District of Columbia.

The above letting is upon the following terms and conditions, all and every one of which Lessee for himself, for his heirs, executors, administrators, and successors, and for such assigns as may be under this agreement doth hereby agree with Lessor, his successors and assigns to keep and perform;

(1) Lessee shall, without previous demand, pay the rent specified, at the time, at the office and in the manner above provided.

(2) Lessee shall pay the water rent, electric light and gas bills as the same may respectively become due and chargeable against the said premises during the term aforesaid.

[*Words enclosed in brackets erased in copy.]

10 (3) Lessee shall not use, or allow to be used, the said premises for any unlawful purpose or for any purpose other than above mentioned, nor assign the said lease, nor sublet the said premises, or any part thereof, without the written consent of Lessor first endorsed thereon.

(4) Lessee shall not keep or allow to be kept, gasoline or any explosives whatsoever at any time on the herein described premises.

(5) Lessee willl, during the term, keep, and at the expiration thereof deliver up, without further notice, the said premises in as good order and condition as the same are at the beginning of the term, reasonable wear and tear and damage by fire or other casualty, not occurring through Lessee's negligence excepted.

(6) Lessor shall not be liable for any damage to any property at any time in said premises or building from water, rain, or snow which may leak into or flow from any part of said building through any defect in the pipes or plumbing, or from any source whatsoever.

(7) Lessee further agrees to repair all damage to plumbing, such as the stoppage to drain pipes, the bursting of pipes by freezing and all the other damage to the plumbing resulting from careless use, at cost and expense of said Lessee, and to be personally responsible under the ordinances or regulations of the District of Columbia to keep said premises in sanitary condition during his tenancy; and the said Lessee shall be liable to the District government for any violation of District Laws.

(8) Lessee shall give Lessor prompt written notice of any accident to or defect in the water pipes, electric wires, or heating apparatus, which will be remedied by Lessor with due diligence, the cost, however, of furnishing or replacing electric lamps broken by

11 Lessee or Lessee's employees to be born- by Lessee. Lessor shall not be responsible for any injury or damage caused by the handling of electric lamps or wires.

(9) Lessee hereby expressly agrees to and with Lessor, his successors and assigns, that if said Lessee shall fail or neglect to do and perform any promise, undertaking, or agreement herein contained (as if the same were now here repeated), and especially if Lessee shall fail or neglect to pay any installment of rent, or any part thereof, when and as the same shall be and become due and payable, Lessor, his successors or assigns, may hereupon terminate this lease and the tenancy thereunder, by a seven (7) days' summons, as provided by law, and should a compromise or settlement be made thereupon, either before or after judgment, it shall not constitute a waiver of any covenant herein contained or of the agreement itself; neither shall any partial payments made after judgment obtained, constitute a waiver of any rights under such judgment. Lessee hereby expressly waiving all right to a thirty (30) days' notice to quit.

(10) Should the Lessor during the continuance of this agreement desire to have again and repossess the said premises and there should at the time have been no default in the payment of rent or a violation of any of the covenants therein, then the said Lessor, his successors or assigns agrees to give the said Lessee a thirty-day notice in writing,

and at the end of that time the said Lessee agrees to remove from and vacate the said premises.

(11) Unless either party shall give to the other written notice for removal at least thirty (30) days prior to the end of the term of this lease, it shall continue upon the terms and conditions then in force for the further period of one month and so on from month to month until terminated by either party giving at least thirty (30) days *written* notice of or for removal prior to the expiration of the then current month.

(12) If during the term of this lease the building is injured by fire or other casualty, not occurring through Lessee's negligence, so that the demised premises are rendered wholly unfit for occupancy, and if said demised premises cannot be repaired within sixty days from the happening of such injury, then this lease shall cease from the date of such injury. In such case, Lessee shall pay the rent apportioned to the time of injury, and shall immediately surrender the leased premises to Lessor, who may enter upon and repossess the same. If any such injury can be repaired within sixty days thereafter, Lessor may enter and repair, and this lease shall not be affected in any manner, except that the rent shall be apportioned and suspended while such repairs are being made; but if said premises shall be so slightly injured by fire or other casualty as not to be rendered unfit for occupancy, then the Lessor agrees that the same shall be repaired with reasonable promptitude, and in that case the rent accrued or accruing shall not cease or determine. In no event shall Lessor be liable for any loss or damage sustained by Lessee by reason of fire, or from other accidental causes.

(13) No provision of this agreement shall be waived or altered except by writing, endorsed hereon or attached hereto and signed by the parties, and no clerk or agent of Lessor shall have power or be deemed or held to have waived or altered any of said provisions unless such waivers or alterations are so endorsed or attached hereto.

13 In witness whereof, the Lessor has signed or caused these presents to be signed by his agent authorized so to do, and the Lessee has hereto set his hand and seal the day and year first above written.

AURILLA S. CAYWOOD.
WILLIAM SMITH.

Tenant sign here.

Witness:

_____.

The foregoing Lease is hereby transferred and assigned to John H. Thomas at the same rent, subject to all terms and conditions and with all the waivers contained in the original.

Witness the Lessor's hand and seal this 18th day of September, A. D. 1920.

By AURILLA S. CAYWOOD.

Witness:

_____.

Affidavit of Defense.

Filed December 21, 1920.

* * * * *

I, William Smith, being duly sworn depose and say: that I am the defendant in the above action.

The Municipal Court did not have jurisdiction of this action as the notice was not in accordance with the requirements of the Ball Rent Law and a certificate of permission has not been obtained by the plaintiff from the Rent Commission of the District of Columbia,

14 under the said law certifying that the plaintiff was entitled to possession; that no application was made by the plaintiff to the Rent Commission; that the plaintiff does not want or need the said premises for the actual bona fide occupancy of himself, his wife, children, or dependents, or for the purpose of tearing down or razing the same in order to immediately construct new rental property, hotel or apartment; that the plaintiff had not complied with any of the requirements of the Rent Commission Law of the District of Columbia known as the Ball Rent Law, nor with the Salisbury Resolution, that the Municipal Court did not have jurisdiction of Landlord and Tenant cases where the tenancy has expired. That the defendant demands a jury trial.

That the plaintiff is not entitled to recover possession of premises sought in this action; that the alleged 30 day notice mentioned in the plaintiff's affidavit expired on October 21st, 1920, as it stated it would expire 30 days from the day of service, and it was served as alleged September 21, 1920, and the monthly tenancy began on the 24th and ended on the 23rd of each month, thus the alleged notice is insufficient and illegal under the Code; that the plaintiff did not serve a thirty day notice on the defendant stating that he needed the premises for the occupancy of himself, his family or dependents; that this defendant has never paid rent to the plaintiff; that the plaintiff did not serve the defendant or his attorney with any of exhibits alleged to be made part of the affidavit, therefore the plaintiff is not entitled to judgment under the said affidavit.

WILLIAM SMITH,
Defendant.

15 Subscribed and sworn to before me this 21st day of
December, 1920.

[SEAL.]

F. L. MAGRUDER,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Friday, January 14, 1921.

Session resumed pursuant to adjournment, Mr. Chief Justice McCoy presiding.

* * * * *

Come now parties hereto by their respective Attorneys of record; whereupon plaintiff's motion filed herein January 10, 1921, for judgment under Rule 19 of this Court, notwithstanding the affidavit of defense is argued and submitted. Upon consideration thereof it is ordered that said motion be, and the same is hereby granted.

Wherefore it is considered that the plaintiff herein do have and recover of defendant herein possession of the premises No. 200 L Street, Northwest, located in the District of Columbia, and recover of defendant and The Fidelity and Deposit Company of Maryland, his surety, the costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment the defendant by his Attorney in open Court, notes an appeal to the Court of Appeals, and the penalty of a bond on said appeal to operate as a Supersedeas is hereby fixed in the sum of Three hundred dollars. (\$300.)

Memorandum.

January 17, 1921.—Supersedeas Bond (\$300.00) approved and filed.

16

Assignments of Error.

Filed February 28, 1921.

* * * * *

The defendant appellant makes the following Assignments of Error to the rulings of the court in the above entitled action on appeal to the Court of Appeals.

1. The court erred in not overruling the motion for judgment under Rule 19, because plaintiff's affidavit is insufficient, denied as to material allegations, and denied to have been served as required by Rule 19.

2. Because the complaint and affidavit of plaintiff both show on their face that this action was brought and was prosecuted in defiance of, and without complying with the requirements of the Ball Rent Law, the court erred in not denying judgment and dismissing the complaint.

3. The Court erred in not denying judgment and dismissing complaint because the Municipal Court did not have jurisdiction

under section 20 or section 1225 of the code, of the alleged cause of action.

4. The Court erred in granting judgment because the affidavit attempts to set up two inconsistent causes of action.

5. The court erred in granting judgment because the 30 day notice to terminate a monthly tenancy expired 3 days before the end of the month.

6. The court erred in granting judgment because the affidavit of plaintiff did not state a cause of action.

7. The court erred, if the judgment was granted for default in rent, in not permitting the defendant to pay, as he offered in court to pay, any default in rent, and in not making plaintiff accept same.

RAYMOND M. HUDSON,
Attorney for Defendant.

17 To J. H. Thomas, plaintiff:

Take notice that I will apply for a transcript of the record in the above action March 5, 1921 as above designated.

RAYMOND M. HUDSON,
Attorney for Defendant.

Designation of Record.

Filed February 28, 1921.

* * * * *

Now comes the defendant and directs the clerk to copy into the transcript of the record on the appeal to the Court of Appeals in the above case the following documents, and papers.

1. Complaint in Municipal Court.
2. Plaintiff's affidavit and exhibits.
3. Defendant's affidavit.
4. Judgment of Municipal Court.
5. All orders and judgments of Supreme Court.
6. Assignments of error.
7. Designation of record.

RAYMOND M. HUDSON,
Attorney for Defendant-Appellant.

Memorandum.

March 7, 1921.—Time to file Transcript of Record in Court of Appeals extended to and including March 14, 1921.

18 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 17, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 64725 at Law, wherein John H. Thomas is Plaintiff and William Smith is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of March, 1921.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3533. William Smith, appellant, vs. John H. Thomas. Court of Appeals, District of Columbia. Filed Mar. 14, 1921. Henry W. Hodges, clerk.

